

8.000 CONDITIONS OF EMPLOYMENT AND OTHER POLICIES FOR MANAGERIAL EMPLOYEES

For union and confidential employees, refer to the applicable collective bargaining agreement for the conditions of employment and other policies similar to those contained in this section.

8.100 Hours of Work

STATEMENT OF PRINCIPLE. The principles of justice cannot be defined in terms of hours, days or weeks and the orderly administration of justice may require employees of the Trial Court to work at times that are irregular and do not fall within the definition of a regular workday or a workweek.

The regular workweek of full-time employees is 37½ hours, excluding meal periods, normally consisting of five days of 7½ hours per day occurring between the hours of 7 a.m. and 5 p.m., depending upon court hours and the needs of a particular court or Administrative Office. For purposes of this Manual, court hours are defined as those hours when court is in session, as determined by the First Justice or the Departmental Chief Justice. Nothing in this Section is intended to limit the authority of the Court Administrator in determining court hours. Employees shall work the hours needed or required by the operational needs of a particular court or Administrative Office, providing reasonable prior notice is given.

8.200 Outside Employment and Business Activity

Trial Court employees hold positions of public trust. Their primary employment responsibility is to the Trial Court, however, it is recognized that employees may have an interest in engaging in outside employment. The public and sensitive nature of the mission of the Trial Court necessitates the following restrictions:

- A. Outside employment or business activity must not violate any law, or policy of the Trial Court.

- B. Outside employment or business activity must not result in any conduct which creates a conflict of interest, or the appearance of a conflict of interest.
- C. Outside employment or business activity must not result in the use, dissemination or disclosure to others of confidential information obtained by reason of his/her employment with the Trial Court.
- D. Outside employment or business activity must not potentially subject the Trial Court to public criticism or embarrassment.
- E. An employee shall not engage in outside employment or business activity during the hours he/she is scheduled to work for the Trial Court unless using approved vacation, personal, or compensatory time.
- F. An employee shall not engage in outside employment that interferes with the employee's availability, capacity, or effective performance of his/her duties as an employee of the Trial Court.
- G. An employee shall not engage directly or indirectly in business activities or financial transactions which rely on confidential information obtained through his/her employment with the Trial Court to obtain benefits, financial or otherwise, for themselves, their family members, or others.

Any employee who plans to begin outside employment or business activity must report the same to his/her department head in writing 14 days prior to the commencement of said employment or business activity. The employee may be directed to contact the State Ethics Commission for advice about the outside employment or business activity. If the department head determines that the outside employment or business activity is inconsistent with the criteria stated above, he/she should recommend to the Court Administrator that the employee be directed to terminate such employment or activity. If the Court Administrator or designee accepts the recommendation, the employee and department head

shall be notified of the decision in writing and the employee shall be required to terminate the employment or business activity upon receipt of notice of said decision.

Employees are generally not required to submit written notice before engaging in uncompensated services, including holding of office in civic, professional, religious, educational, community, social and charitable organizations, so long as membership or office does not conflict with or affect the duties of the employee, or does not violate any law or policy promulgated by the Trial Court, or does not potentially subject the Trial Court to public criticism or embarrassment.

Employees of the Trial Court who are members of the Massachusetts Bar are prohibited from appearing on behalf of a litigant in any State or Federal Court or Administrative Agency unless they are acting within the scope of their employment or are pro se.

8.300 Compensation

8.301 Compensation Rate for New Employees - Refer to **Section 4.402** of this Manual.

8.302 Position Classification

The duties, responsibilities, and qualifications required for each position shall be determined solely by the Trial Court. The assignment of such positions within the Classification and Wage Compensation Plan for the Trial Court will be made solely by the Court Administrator. The classification of a position may be referred to as a level, grade, or tier, depending on the position.

8.303 Credit for Prior Service

Employees who leave the Trial Court in good standing are entitled to benefits earned prior to termination if they are rehired within five years of the time period when they were on a court or Administrative Office payroll. These benefits shall be determined in accordance with the provisions of

this Manual at the time of termination. There shall be no credit for any benefits if the employee's termination was involuntary or the result of disciplinary action. An employee's prior salary with the Trial Court may be considered in determining the step placement in the level of the position to which he/she is returning.

8.304 Step Rate Increases

An employee will advance to the next higher step rate in his/her level after each twelve months of creditable service until the maximum step salary is reached unless a step rate increase is denied by the department head. A step rate increase will become effective on the employee's twelve month anniversary date. Time off the payroll such as leaves of absence without pay is not creditable service for the purpose of step rate increases unless such unpaid leave is for workers' compensation leave, parental leave, medical leave, military leave, or Family and Medical Leave Act leave. Step rate increases occur automatically in HR/CMS in the bi-weekly pay period in which the anniversary date occurs. The Department Head must notify the Human Resources Department of the denial of any step increase.

In the event an employee is denied a step rate increase, he/she shall be given a written statement of the reasons therefore not later than five workdays preceding the date when the increase would otherwise have taken effect.

8.305 Salary upon Promotion - Refer to Section 4.403 of this Manual.

8.400 Probationary Period

A. Newly Hired Managerial Employees

Newly hired employees, regardless of funding source, shall serve a nine consecutive month probationary period from date of hire, excluding time spent on accrued leave (including, but not limited to vacation, sick, or personal time, but not compensatory time) within which the employee's competence to perform and satisfy all requirements of the position will be determined. For example, an

employee hired on February 2, who takes a week's vacation in July, would have a probationary period that extends to November 9. An employee hired on February 2 who takes no accrued time would have a probationary period that extends to November 2.

Newly hired employees whose performance is deemed unsatisfactory at the sole discretion of the appointing authority during the probationary period will be terminated prior to the expiration of said period.

Newly hired employees, while in the probationary period, shall be eligible to earn vacation and sick leave during their probationary period, and to take such earned vacation and sick leave at the discretion of the department head. The probationary period shall count in determining eligibility for other benefits. A probationary period will be deemed satisfactorily completed unless the employee's services have been terminated by his/her appointing authority before the completion of the probationary period.

B. Newly Promoted Managerial Employees

1. Newly promoted employees, regardless of funding source, shall serve a six consecutive month probationary period from the commencement of the date of promotion, excluding time spent on accrued leave (including, but not limited to vacation, sick or personal time but not compensatory time) within which the employee's competence to perform and satisfy all requirements of the position will be determined. Newly promoted employees may take any earned vacation and sick leave at the discretion of the department head, but that leave will extend the employee's probationary period.

2. Employees who transfer to or are appointed to a comparable position in another court shall serve a three consecutive month probationary period from the commencement of the date of such transfer or appointment,

excluding time spent on accrued leave (including, but not limited to vacation, sick or personal time but not compensatory time), within which the employee's competence to perform and satisfy all requirements of the position in the new court or office will be determined. Such employees may take any earned vacation and sick leave at the discretion of the department head, but that leave will extend the employee's probationary period.

C. Temporary or Acting Trial Court Positions

The probationary period for an employee whose employment or appointment status is other than permanent will exist as long as he/she continues to serve in a temporary or acting capacity.

Newly hired employees may be terminated while serving in a temporary capacity at the sole discretion of the appointing authority. Employees serving in an acting capacity shall be returned to their former permanent position either upon completion of such assignment or at a time determined at the discretion of the appointing authority.

D. Extensions

A probationary period may be extended by agreement of the department head and the employee. A copy of the extension notice must be forwarded to the Human Resources Department.

E. Performance Review

At the mid-point of the probationary period, the department head or appropriate designee must meet with the employee to discuss issues, including but not limited to, the performance of his/her duties, attendance, cooperation with other employees in the office and the general public, and training needs. The department head must memorialize the discussion and provide a copy to the employee.

8.500 Vacation

All employees, including those whose vacation is set by statute, automatically accrue their vacation on a bi-weekly basis in HR/CMS.

A. Accrual of Vacation

1. A full-time managerial employee will automatically accrue vacation on an hour-per-hour basis in HR/CMS utilizing the schedule below:

- a. Less than 4 years and six months of employment:

Yearly Rate = 150.0 hours

Hour per Hour Rate= 0.077 hours

Accrual Rate per bi Weekly Pay Period = 5.769 hours

Maximum Balance = 300 hours

- b. At 4 years and 6 months but less than 9 years and 6 months of employment:

Yearly Rate= 187.5 hours

Hour per Hour Rate= 0.096 hours

Accrual Rate per bi Weekly Pay Period=7.211 hours

Maximum Balance= 375 hours

- c. At 9 years and 6 months of employment and continuing thereafter:

Yearly Rate = 225.0 hours

Hour per Hour Rate = 0.115 hours

Accrual Rate per bi Weekly Pay Period = 8.654 hours

Maximum Balance = 450 hours

2. For most employees, the amount of vacation an employee is entitled to earn is determined based upon their date of hire by the Trial Court. The following types of service are considered creditable service for vacation earnings purposes:

- a. prior county service for those employees who became state employees on the July 1, 1978 effective date of c. 478 of the Acts of 1978, or who became state employees consistent with the provisions of c. 203 of the Acts of 1988.
 - b. prior State service provided there has not been a break in employment of 5 years or more prior to being hired in the Trial Court. Periods of employment preceding a break in employment of 5 years or more shall not count for purposes of determining vacation entitlement of an employee.
3. Part-Time Employees
A regular, part-time employee shall accrue vacation at the end of each bi-weekly pay period of employment on an hour-per-hour basis for each hour worked or paid according to the vacation schedule of permanent, full-time employees.
4. Employees with Prior State Service
An individual who is appointed to a Trial Court position with continuous state service prior to such appointment may transfer to the Trial Court the vacation balance he/she has accrued in HR/CMS subject to the maximum accrual provisions in Section A.1 above.

B. Procedure

1. Vacation accrual shall be credited at the end of each bi-weekly pay period of employment on an hour-per-hour basis for each hour worked or paid. Vacation may accrue only to the maximum earned in a two-year period of employment.
2. Vacation may be taken in increments of ½ hour.
3. Vacations may be scheduled and taken throughout the year at the time requested by employees insofar as practicable depending on the operational needs of the court or

Administrative Office. The department head is vested with the right to make the ultimate determination as to when vacations will be scheduled and taken.

4. Employees shall receive payment for accrued vacation upon separation from employment. In the event of the death of an employee, vacation pay due shall be paid to the surviving beneficiary(s) legally designated by the employee under the State's retirement system, or if there is no such beneficiary, to the estate of the deceased employee.

8.600 Sick Leave

Sick leave will automatically be credited in HR/CMS at the end of each bi-weekly pay period on an hour-per-hour basis for each hour worked or paid in accordance with the sick leave schedule for Trial Court employees in **Section 8.601(A)** below. The accrual of sick leave is applicable as of the commencement of an employee's service in the court system except where otherwise stated in this Manual.

Those employees permanently appointed to (and while serving in) the position of Clerk-Magistrate or Assistant Clerk in the District Court Department, the Boston Municipal Court Department, the Juvenile Court Department, the Housing Court Department, and the Recorder, Land Court Department, prior to January 1, 1987 are entitled to 30 days sick leave in each calendar year and may not accumulate more than 180 days of sick leave notwithstanding the provisions of any policy in this Manual to the contrary.

All other employees are governed by the sick leave schedule outlined in **Section 8.601A** below.

8.601 Accrual of Sick Leave

- A. Sick Leave Schedule
 1. Full-time managerial employees
Yearly rate = 112.5 hours
Hour per hour rate = 0.058
Accrual Rate per bi-weekly Pay Period = 4.327 hours

2. Part-time employees - on an hour-per-hour basis for each hour worked or paid, at the rate of 0.058 hours.
- B. For those managerial employees who accumulate sick leave in accordance with the schedule outlined in subsection (A) above, there is no cap on the amount of sick leave that may be accumulated.
- C. An individual who is appointed to a Trial Court position with continuous state service prior to such appointment may transfer to the Trial Court the sick balance he or she has accrued in HR/CMS.

8.602 Notifications

Notification of absences must be given by the employee, or his or her designee with the approval of the department head, to his or her department head as early as possible on each day of absence. Such approval of a designee will not be unreasonably denied. The notification of absence must include the general nature of the illness or injury and the estimated period of time for which the employee will be absent. Where circumstances warrant, the department head shall reasonably excuse the employee from such daily notification. If such notification is not made, such absence may, at the discretion of the department head, be applied to absence without pay.

8.603 Use of Sick Leave

- A. Sick leave shall be granted at the discretion of the department head to an employee only under the following conditions:
 1. When an employee cannot perform his or her duties because he or she is incapacitated by personal illness or injury;
 2. When the spouse, child, or parent of either the employee or his or her spouse or a person living in the immediate household of an employee is seriously ill; the employee may utilize sick leave credits up to a maximum of 30 days per calendar year (225 hours);
 3. When through exposure to contagious disease, the presence of the employee at his or her work location would jeopardize the health of others;

4. When appointments with a doctor or any other health provider cannot be reasonably scheduled outside of normal working hours for purposes of medical treatment or diagnosis.
- B. Sick leave must be charged against unused sick leave credits in units of no less than $\frac{1}{2}$ hour, but in no event may the sick leave credits used be less than the actual time off.
- C. Any employee having no sick leave credits, who is absent due to illness or injury, may, upon request and with the approval of the department head, be placed on credited and unused vacation leave or medical leave without pay. Such leave shall be charged on the same basis as provided in subsection (B). Such requests shall not be unreasonably denied. The Trial Court will continue to pay its portion of group health and life insurance premiums for employees on medical leave.
- D. No employee shall be entitled to a sick leave under the provisions of this Manual in excess of the accumulated sick leave credits due such employee.
- E. Employees whose service with the Trial Court is terminated or who voluntarily resign shall not be entitled to any compensation in lieu of accumulated sick leave credits. However, employees who retire under the provisions of G.L. c. 32 or who become deceased while they are an employee of the Trial Court may be paid 20 percent of their earned, unused, accrued sick leave, as of the effective date of their retirement or death, at their base salary rate in effect at the time of retirement or death unless otherwise restricted by statute. In the case of a deceased employee, payment will be made to the surviving beneficiary(s) legally designated by the employee under the State's Retirement System, or if there is no such beneficiary(s), to the estate of the deceased employee. It is understood that any such payment will not change the employee's pension benefit. Employees must receive their cash-out of sick leave upon retirement,

and cash-out is not permitted if an employee defers his or her date of retirement.

- F. Sick leave earned by an employee following a return to duty after a leave without pay or absence without pay will not be applied retroactively to such leave or absence.
- G. Employees who use three (3) or fewer sick days (22.5 hours) in a calendar year shall be allowed to choose between receiving one day of salary or receiving one (1) additional vacation day (7.5 hours) (prorated for part-time employees) to be used in accordance with **Section 8.500** provided they had no time off the payroll during the calendar year.

8.604 Abuse of Sick Leave

- A. When the department head has reason to believe that sick leave is being abused, the department head may require the employee to submit satisfactory medical evidence of illness and/or be examined by a physician to be determined by the department head. The Trial Court will pay the cost of the examination by the physician designated by the department head. If an employee so desires, he or she may also be represented by a physician of his or her choice at his or her expense. Satisfactory medical evidence shall consist of a signed statement by a licensed Physician, Physician's Assistant, Nurse Practitioner, Chiropractor, or Dentist that he/she has personally examined the employee and shall contain the nature of the illness or injury, unless identified as being of a confidential nature, a statement that the employee was unable to perform his or her duties due to the specific illness or injury on the days in question, and the prognosis for the employee's return to work. In cases where the employee is absent due to a family or household illness or injury, as defined in **Section 8.603(A)**, satisfactory medical evidence shall consist of a signed statement by medical personnel mentioned above indicating that the person in question has been

determined to be seriously ill and needing care on the days in question.

- B. A medical statement provided pursuant to this Section shall be on letterhead of the attending physician or medical provider as mentioned above. Failure of the employee to produce such evidence within ten calendar days of its request, or to take such physical examination, may result, at the discretion of the department head, in denial of sick leave for the period of absence.
- C. Any unauthorized absence may be the basis for disciplinary action pursuant to **Section 16.000** of this Manual.
- D. Abuse of sick leave may be the basis for disciplinary action pursuant to **Section 16.000** of this Manual.

8.605 Fitness for Duty upon Return to Work

Upon return to work following a sick leave in excess of five (5) consecutive work days, or when the department head has reason to suspect that an employee is unfit for duty, a managerial employee may be required to provide satisfactory medical evidence of fitness for duty from his/her own physician or may be required to undergo a medical examination by a physician appointed by the Trial Court at no cost to the employee to determine his or her fitness for work, and will be placed on administrative leave with pay pending the results of the examination. If an examination is required, the employee, if he or she so desires, may be represented by a physician of his or her choice. If the evidence or examination reveals the employee is fit for duty, the employee will be returned to duty without loss of wages or leave. If the evidence or examination reveals that the employee is unfit for duty, the employee's own leave will run from the time of diagnosis.

8.606 Extraordinary Circumstances

In extraordinary circumstances, where the department head or designee has sufficient reason to believe that an employee has a mental or physical incapacity rendering him/her unfit to perform his/her job or which jeopardizes workplace safety or stability, the department head or designee

may authorize the removal of such employee from the workplace. The employee will be required to undergo a medical examination to determine his/her fitness for work, and will be placed on administrative leave with pay pending the results of such examination. The employee, if he/she so desires, may be examined by a physician of his/her choice, in which case such verification and cost shall be the responsibility of the employee. The Trial Court reserves the right to obtain an initial or second opinion from a Trial Court-designated physician. Such cost shall be borne by the Trial Court.

In the event there is a conflict between the results of the medical examinations/opinions of an employee's own physician and the physician designated by the Trial Court, such physicians shall designate a mutually agreed upon third neutral physician to resolve the conflict. The cost of such examination shall be borne equally by the employee and the Trial Court.

8.700 Holidays

8.701 Holidays

A. The following days shall be holidays for employees as defined in G.L. c. 4, sec. 7:

New Year's Day	Memorial Day	Veteran's Day
Martin Luther King Day	Independence Day	Thanksgiving Day
Presidents' Day	Labor Day	Christmas Day
Patriot's Day	Columbus Day	

B. All holidays shall be observed on the Commonwealth's legal holiday unless an alternative day is designated by the Court Administrator.

8.702 Working on Holidays

An employee required to work on a holiday shall receive an alternative day off with pay within 12 months following the holiday, to be taken at a time approved by his/her department head.

8.703 Eligibility for Holiday Pay

To qualify for holiday pay, an employee must "actually work" his/her last regularly scheduled workday preceding the holiday and the first regularly scheduled workday following the holiday. The term "actually work" for purposes of this section only, shall be deemed to include paid leaves of absence as authorized pursuant to this Manual, subject to the approval of the department head.

When a holiday occurs on a day that is not an employee's regular workday, he/she shall be entitled to one alternate day off with pay within 12 months following the holiday, to be taken at a time approved by the department head. An alternate day off for such holidays must be taken in a full day increment. An absence without pay approved by the employee's department head or an absence without the authorization of the employee's department head on the last regularly scheduled workday preceding a holiday or on the first regularly scheduled workday following the holiday shall not count as time actually worked for purposes of this section.

An employee is not entitled to be paid for unused holidays at the time of his/her separation from employment.

8.704 Religious Holidays

An employee, with the approval of his/her department head, may take vacation, personal leave, or compensatory time to observe a religious holiday.

8.705 Pro-Rated Holidays for Part-Time Employees

Part-time employees will earn holiday pay in the same proportion that their service bears to full-time service. Part-time employees who are scheduled but not required to work on a holiday and would receive less in holiday pay than in regular pay for the hours they were regularly scheduled to work may use other available leave time, or upon the request of the employee and the approval of the department head, may make up the difference in hours that same workweek. When a holiday occurs on a day that is not an employee's regular workday, he/she shall receive a pro-rata amount of compensatory

time off with pay within 12 months following the holiday, to be taken at a time approved by the department head. Such compensatory time off must be used in the same increment in which it is earned.

An employee who is on leave without pay or absent without pay for that part of his/her scheduled workday immediately preceding or immediately following a holiday that occurs on a regularly-scheduled workday for which the employee is not required to work shall not receive holiday pay for the holiday.

8.800 Leave of Absence

8.801 Leave of Absence Procedure

A leave of absence may be granted by the department head with the approval of the Departmental Chief Justice or Deputy Court Administrator (as appropriate) and the Court Administrator. A request for a leave of absence must be processed through the submission of an Employee Request for Leave of Absence form (Appendix C, Form F18). Requests for paid leave under this Section shall be made to the department head consistent with the specific eligibility requirements for each type of leave.

8.802 Types of Leave

A. Unpaid Personal Leave

An unpaid personal leave of absence may be granted for a period not to exceed two months or as extended in accordance with **Section 8.804** of this Manual. A leave of absence without pay may be granted for any reasonable purpose including, but not limited to, educational semesters or personal matters, or to care for or to arrange care of a family member as defined in this Manual.

Employees requesting personal leave have no guarantee to return to their prior court if the leave is approved.

B. Leave Under the Family and Medical Leave Act (FMLA leave)

1. An employee who has completed twelve months of employment and has worked at least 1250 hours in the previous 12-month period is entitled to 12 weeks of unpaid leave for the following reasons:

- a. for the birth of a child or to care for such child;
- b. for the placement of a child with the employee for adoption or foster care;
- c. to care for a spouse, child, or parent with a serious health condition;
- d. for the employee's own serious health condition; or
- e. for any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. An eligible employee may also take up to 26 work weeks of leave during a single 12 month period to care for a covered service member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member.

During family leave taken in conjunction with the birth, adoption or placement of a child, an employee shall receive his/her salary for ten (10) days of said leave, at a time requested by the employee. The ten (10) days of paid family leave shall count towards the 12 weeks of FMLA leave and may be used on an intermittent basis over the twelve (12) months following the birth or adoption, except that this leave may not be charged in increments of less than one (1) day.

- 2. An employee's entitlement to 12 weeks of FMLA leave shall be calculated by measuring backward from the date an employee uses any FMLA leave. An employee may only receive 12 weeks of FMLA leave in any such calculated 12-month period. In the event that the employee has a spouse employed by the Trial Court, the employee and spouse are jointly entitled to a combined total of 12 weeks of FMLA leave for the birth, adoption or placement of a child or to care for a

parent with a serious health condition. Each employed spouse is entitled to 12 weeks of FMLA leave for his/her own serious health condition.

3. An employee requesting leave for any of the eligible reasons may have that leave period designated by the department head as FMLA leave. The employee need not expressly designate the leave request as FMLA leave. Both paid and unpaid leaves may be designated by the department head as FMLA leave.
4. An employee requesting FMLA leave must give the department head at least 30 days advance notice of leave, to the extent advance notice is practicable. Employees must use the U.S. Department of Labor Form when requesting FMLA leave. The form, which can be downloaded at <https://www.dol.gov/whd/forms/WH-380-E.pdf> (for an employee's own serious health condition) or <https://www.dol.gov/whd/forms/WH-380-F.pdf> (for a family member's serious health condition) may require certification from a doctor or other health care provider concerning the serious health condition necessitating the leave. Contact the Human Resources Department for assistance with the forms or questions about the required certification. Such certification must be provided by the employee to his/her department head within 15 days from the date it is requested. The department head may also require the employee to obtain a second opinion from a health care provider designated by the Trial Court and at the Trial Court's expense. If the two certifications then differ, the Trial Court and employee shall agree on a third health care provider who will provide a final and binding opinion, at the Trial Court's expense. The Trial Court may request an update of the

certification at any time after 30 days from the initial certification and every 30 days thereafter. The Trial Court may require the employee to provide certification of his/her fitness to return to work as a condition of restoration to his/her job.

5. FMLA leave for purposes of the birth, adoption or placement of child must be completed within 12 months of the birth, adoption or placement and must be taken all at one time, up to the 12-week maximum, except as provided in **Section 8.802B1**, above.
6. FMLA leave for a serious health condition may be taken intermittently or on a reduced time basis only if such a schedule is needed for medical reasons. An employee shall schedule any medical treatment so as to create minimum disruption for his/her court department.
7. The employee may elect, or the department head may require, the employee to substitute paid vacation, personal leave or paid sick leave as otherwise provided for in this agreement, as part or all of the 12-week FMLA leave period.
8. An employee will be returned to the same or an equivalent position upon return to work after FMLA leave and will retain the right to receive any benefits for which he/she was eligible as of the date of the leave.
9. The Trial Court will continue to pay its portion of group health and life insurance premiums for employees on FMLA leave. An employee on unpaid FMLA leave will be required to submit his/her share of group health and life insurance premiums in a manner as provided by the Group Insurance Commission.

C. Parental Leave

Unpaid parental leave shall be granted in accordance with the eligibility and other requirements of G.L.c.149, §105D. This statute

covers employees who have completed at least three months of their probationary period, and provides for 8 weeks of parental leave for the purpose of giving birth or for the placement of a child under 18 for adoption (or under 23 for a mentally or physically disabled individual). If the employee has earned, accrued sick leave or vacation credits at the commencement of the parental leave, the employee may use such paid leave under the conditions specified in **Sections 8.500 or 8.600** of this Manual. A female employee shall be presumed to be incapacitated by the birth of a child for a minimum of six weeks following such birth and may, upon request, use up to six weeks of her accrued sick leave up to that date without providing specific medical documentation of incapacity. The provision of **Section 8.802 B** may be applicable to an employee requesting leave for the birth or placement of a child or to care for such child and up to 10 days of such leave may be paid under the provisions of that Section. For eligible employees, FMLA and Parental Leave may run concurrently. The 10 paid days are shared when both parents are employed by the Trial Court.

D. Jury/Witness Duty

1. Jury Duty. Upon presenting a summons for Jury Duty to his/her department head, an employee shall be granted leave with pay for the duration of such service. If the jury adjourns early or the employee is not chosen as one of the jurors, he/she shall report to work unless authorized by the department head to take unpaid leave or accrued vacation, personal, or compensatory time for the remainder of the day. If the employee also receives a fee for jury duty, such fee must be made payable to the Commonwealth and turned over to the employee's department head accompanied by a court certificate of service. Expenses reimbursed by the court for mileage or parking shall be retained by the employee and shall not be considered part of the jury fee.

2. Witness Summoned in Trial Court-related Litigation. An employee summoned as a witness in court or before an administrative agency in a matter involving the Trial Court or arising out of employment with the Trial Court shall be granted court leave with pay upon filing of the appropriate notice of service with his/her department head. Any witness fees paid to the employee for service during the time the employee is on court leave with pay must be made payable to the Commonwealth. The employee may be entitled to mileage reimbursement or other travel pay (See **Section 10.000** of this Manual) if summoned as a witness on behalf of the Trial Court. Any fees paid to an employee as a witness during a vacation period or time when the employee is not on court leave with pay may be retained by the employee. The employee shall retain any expenses paid for travel, meals, room, etc.

3 Other Court Appearances. No court leave will be granted when the employee is a party to the matter, unless directed by the Trial Court. No court leave will be granted when the employee is testifying in non-job related civil litigation (except leave as provided in **Section 8.802L** below). No court leave shall be granted to an employee who is or was also in the employ of any town, city or county of the Commonwealth, or in the employ of the Federal government or any private employer and who is summoned on a matter arising from that employment. To be excused from work in any of these circumstances, an employee must request unpaid personal leave or request to use accrued vacation, personal, or compensatory leave to cover this absence.

4. Approval of requests for court leave outside of these parameters, (e.g., when summoned by the Commonwealth as a witness), must be made in consultation with the Human Resources Department.

E. Military Leave

A full-time employee who requests leave to serve in the Armed Forces of the United States shall be entitled to a Military Leave of Absence without pay and shall be entitled to the re-employment benefits granted under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), as amended. If the employee does not return to work in the Massachusetts Courts within the statutorily required number of days after discharge by the military, he/she shall be deemed to have resigned from the Massachusetts Courts.

Pursuant to G.L. c. 33, §59(a), any full-time employee of the Massachusetts Courts in the service of the armed forces of the Commonwealth or a reserve component of the armed forces of the United States is entitled to a leave of absence without loss of pay during service in the uniformed services, annual training under G.L. c. 59, §60 or drills and parades under §61. This leave of absence may not exceed 40 calendar days in any federal fiscal year. Employees who take leave under these sections shall not lose any seniority or any accrued vacation leave, sick leave, personal leave, compensation time, or earned overtime.

Pursuant to G.L. c. 33, §59(b), an employee in the service of the armed forces of the Commonwealth, under §§38, 40, or 41 of G.L. c. 33 shall be entitled receive pay without loss of his/her ordinary remuneration and shall not lose any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime during the first 30 consecutive days of any mission. Thereafter, any such ordinary remuneration shall be reduced by any amount received either from the United States or the Commonwealth

as base pay for military service performed during the same pay period, and there shall be no loss of any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime. National Guard duty performed under Title 32 of the United States Code shall not be deemed service in the armed forces of the Commonwealth under §§38, 40 or 41 for the purposes of this section.

Pursuant to G.L. c. 33, §59(c), an employee of the Commonwealth in the armed forces of the Commonwealth performing duty under Titles 10 or 32 of the United States Code shall be paid the regular base salary as a public employee for each pay period of such military leave of absence, reduced by any amount received either from the United States or the Commonwealth as base pay for military service performed during the same pay period, and shall not lose any seniority or any vacation leave, sick leave, personal leave, compensation time or earned overtime.

Pursuant to G.L. c. 33, §59(d), an employee of the Commonwealth in a reserve component of the armed forces of the United States who is ordered to service for more than 30 consecutive days shall be paid the regular base salary as a public employee for each pay period of such military leave of absence, reduced by any amount received either from the United States or the Commonwealth as base pay for military service during the same pay period. No such employee shall lose any seniority or accrued vacation leave, sick leave, personal leave, compensation time or earned overtime.

An employee requesting Military Leave under this Section shall be required to provide a copy of his/her orders to the immediate manager and the Human Resources Department at the time of requesting the Military Leave.

F. Leave for Political Office and Political Activity

1. Leave for Political Office

An employee who becomes a candidate for any federal, state, county or municipal elected office, until the election is decided or until he/she ceases to be a candidate, must:

- a. request a leave of absence without pay; or
- b. take accrued vacation time; or
- c. receive prior approval of the Court Administrator to continue employment without taking an unpaid leave of absence.

This provision does not apply to an elected Clerk or Register who is a candidate for re-election.

Requests for a leave of absence shall be made in writing by the employee to his/her department head. If the employee is elected, such leave of absence may be extended until such time as he/she ceases to hold office, but may be denied based upon the operational needs of the court. Employees requesting political leave have no guarantee to return to their prior court if the leave is approved.

Requests for approval to continue employment without taking a leave of absence shall be made in writing by the employee to the Court Administrator and shall set forth in detail the nature of the political office sought and the duties of the

position held by the employee in the Trial Court and shall be accompanied by an opinion from the State Ethics Commission and, if applicable, the Advisory Committee on Ethical Opinions for Clerks of the Courts, concerning the existence of any conflict of interest affecting the employee's action. The Court Administrator will review the request in light of the balancing test set forth in Williams v. Mason, et al., CA 91-30218-FHF, United States District Court for the District of Massachusetts.

2. Political Activity

- a. G.L.c.55, §§13-17 set out certain restrictions and prohibitions concerning public employees and political activity, including prohibitions against soliciting or receiving political contributions. Employees should familiarize themselves with those provisions as well as the information available from the Commonwealth's Office of Campaign and Political Finance and must comply with all statutory requirements. In general, all employees of the Trial Court may participate in political activity during non-duty hours as long as such participation does not create a conflict of interest, is consistent with existing statutes and rules of court, and does not occur during the regularly scheduled workday.
- b. Employees who choose to participate in political activity shall not use their Trial Court position in connection with such political activities.
- c. Employees may not use Trial Court supplies, equipment, or facilities in connection with any political activity.

G. Leave for Transfer Within the Trial Court

A leave without pay may be granted to an employee to allow the employee to assume another position within the Trial Court. The period of the leave will not exceed the probationary period for the position the employee is assuming. The request should be submitted in writing to the department head, who will indicate approval/disapproval. The department head will forward the request to the Departmental Chief Justice and, in the case of Probation Officers, to the Commissioner of Probation in addition to the Departmental Chief Justice. The Departmental Chief Justice and the Commissioner of Probation, where applicable, will then forward such requests with their recommendations to the Court Administrator. Such leaves shall not be processed through HR/CMS.

H. Bereavement Leave

1. An employee shall be granted a leave of absence with pay to the extent necessary but not in excess of seven days upon evidence satisfactory to the department head of the death of a spouse, child, or stepchild of the employee;
2. An employee shall be granted a leave of absence with pay to the extent necessary but not in excess of four days upon evidence satisfactory to the department head of the death of:
 - a. A parent, guardian, grandparent, grandchild, brother, sister, or step-parent of the employee;
 - b. A parent, grandparent, brother or sister of the employee's spouse; or domestic partner; or
 - c. A person living in the household of the employee.
3. An employee shall be granted a leave of absence with pay to the extent necessary but not in excess of one day upon evidence satisfactory to the department head of the death of:

- a. A spouse of the employee's brother or sister; or
- b. A spouse of the brother or sister of the employee's spouse or domestic partner.

I. Workers' Compensation

- 1. Employees absent due to injuries received on the job in the service of the Trial Court which are compensable under the Workers' Compensation Act (G.L. c. 152) are eligible for leave up to 12 months, and will receive the following benefits while on such leave:
 - a. earned, accrued sick leave as if the employee were regularly employed; however, such sick leave is not eligible for buy-back at retirement.
 - b. creditable service for determining rate of vacation under **Section 8.500** of this Manual;
 - c. creditable service for step increase purposes;
 - d. retention of rights to the employee's position.
- 2. The Trial Court reserves the right to backfill the position of an employee who is on workers' compensation leave, and to reassign the new employee upon the return of the employee on such leave.
- 3. Employees who return to work within twelve months are guaranteed to return to their same position and court location.
- 4. Employees using accumulated sick or vacation leave to supplement Workers' Compensation benefits shall not receive pro-rated vacation or sick leave as provided in **Sections 8.500** or **8.600** in addition to that provided in A, above.
- 5. Employees receiving partial disability payments under the Workers' Compensation Act and working less than a full time schedule shall also accrue vacation leave on a pro-rata basis as provided in **Section 8.500** of this Manual and shall not be

subject to the twelve month limitation on their rights to retain their position.

6. In order for an employee receiving Workers' Compensation to receive Trial Court group health and life insurance rates, the employee must be on an approved medical leave of absence.

J. Small Necessities Leave Act

Trial Court employees are eligible to receive up to 24 hours of unpaid leave to attend to various family obligations under G. L. c.149, §52D, commonly referred to as the "Small Necessities Leave Act".

K. Voting Leave

An employee whose hours of work preclude him/her from voting in a town, city, state, or national election shall upon request be granted a voting leave with pay not to exceed two hours for the sole purpose of voting in the election.

L. Abuse/Violence Leave

Pursuant to G.L.c.149, §52E, employees are entitled to up to 15 days of paid leave in a 12 month period if the employee, or a family member is a victim of certain abusive behavior, including domestic violence. The employee must be using such leave to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee. The employee must not be the perpetrator of the abusive behavior, and must provide documentation specified in the statute upon request by the department head. Notice of leave under this Section should be

given in advance, except in cases of imminent danger to the employee's health or safety, or in cases of a threat of imminent danger to the health or safety of the employee or the employee's family members, then notice must be provided within 3 workdays that the leave was taken or is being taken under this Section. For specific definitions and qualifying information, see www.mass.gov/ago (search for "employment leave to address an abusive situation") or contact the Human Resources Department. All information related to a leave under this section will be kept confidential by the Trial Court consistent with the statutory requirements.

8.803 Failure to Return from Leave

- Employees who do not return to work upon the expiration of an approved leave or after notice that they are absent without leave will be considered to have voluntarily resigned.

8.804 Extension of Leave

A request from an employee for an extension of leave beyond the time limits as set forth in this Manual requires the approval of the Court Administrator in consultation with the employee's department head and the Departmental Chief Justice, as applicable.

8.900 Paid Personal Leave

- A. During the first full pay period in January, employees hired prior to July 1, 2012 will be credited annually with five days of personal leave, which may be taken by the last Saturday prior to the first full pay period of the next January. Employees hired after July 1, 2012 will be credited annually with three days of personal leave, which may be taken within the same time period. Part-time employees will be credited on a pro-rata basis.
- B. Employees hired from a State agency with no break in service may transfer any accrued and unused personal leave recorded in HR/CMS, but may not substitute their State agency hire date in order to receive more than three days of annual personal leave from the

Trial Court.

- C. Personal leave may be taken during the calendar year when requested by such employee upon approval by the department head. Any personal leave not taken by the last Saturday prior to the first full pay period in January will be forfeited by the employee.
- D. Personal leave may be taken in $\frac{1}{2}$ hour increments, with the approval of the department head.
- E. Newly hired employees who terminate within one year of date of hire who have used personal leave in excess of $\frac{1}{4}$ day per month of service up through the date of termination will be required to pay such excess time back at the time of termination.
- F. Employees shall not be paid for unused personal leave upon retirement or other separation from employment.